

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 UNITED STATES DISTRICT COURT  
11 WESTERN DISTRICT OF WASHINGTON  
12 AT TACOMA

12 KEITH L. NASH AND JAMAR HURSE,

13 Plaintiffs,

14 v.

15 RICK ROBINSON, *et al.*,

16 Defendants.

Case No. 09-5178RBL/JRC

REPORT AND RECOMMENDATION TO  
DENY CLASS CERTIFICATION

NOTED FOR:  
February 26, 2010

17  
18  
19 This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned  
20 Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local  
21 Magistrate Judge's Rules MJR 1, MJR 3, and MJR 4. Before the court is plaintiffs' motion for  
22 class certification and appointment of counsel (Dkt. # 19). The motion for appointment of  
23 counsel has been denied by separate order. This Report and Recommendation addresses the  
24 motion for class certification.  
25  
26

1 FACTUAL BACKGROUND

2 Plaintiffs challenge their level III sex offender classification claiming that they were not  
3 provided a hearing or the ability to contest their classification. They also challenge numerous  
4 policies regarding where they can go while on community supervision, and the fact that they did  
5 not receive certain funds for transportation, food, clothing, and housing. In addition, plaintiff  
6 Nash also challenges a probation hearing and alleges a denial of due process at that hearing.  
7 Plaintiffs allege that the denial of funds is racially motivated. Plaintiffs request injunctive relief,  
8 including release from community supervision. They also ask for nominal damages (Dkt. # 11,  
9 Amended Complaint).  
10

11 DISCUSSION

12 The prerequisites for a certification of a class are set forth in Fed. R. Civ. P. 23. Under  
13 section (a), a member of the class may sue on behalf of the class only if: (1) the class is so  
14 numerous that joinder is impractical, (2) there are questions of law or fact common to the class,  
15 (3) the claims or defenses of the representative are typical of the class, and (4) the representative  
16 will fairly and adequately represent the class. Fed. R. Civ. P. 23 (a).  
17

18 Plaintiffs have not made any of these showings. In fact, plaintiffs have not adequately  
19 defined the class they are trying to have certified. Further, the complaint raises many claims  
20 specific to Mr. Nash, and not the class. For example, his claim regarding being denied witnesses  
21 at a parole hearing is not one allegedly shared by other class members. The only common claim  
22 appears to be the allegation that funds are being denied black level III sex offenders based on  
23 their race. This, by itself, is not sufficient to meet the requirements of Fed. R. Civ. P. 23(a). The  
24 motion for class certification should be **DENIED**.  
25

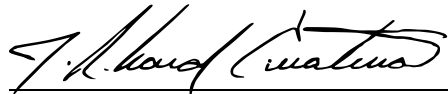
26 /

1 CONCLUSION

2 The court should **DENY** the motion for class certification. Plaintiffs have not shown the  
3 proposed class is numerous or that a class action is warranted. A proposed order accompanies  
4 this Report and Recommendation.

5 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
6 Procedure, the parties shall have fourteen (14) days from service of this Report and  
7 Recommendation to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections  
8 will result in a waiver of those objections for purposes of appeal. Thomas v Arn, 474 U.S. 140  
9 (1985). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the clerk is directed to  
10 set the matter for consideration on **February 26, 2010**, as noted in the caption.  
11

12 DATED this 1<sup>st</sup> day of February, 2010.

13  
14 

15 J. Richard Creatura  
16 United States Magistrate Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26